

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

Elaine Go,

Plaintiff,

v.

Clark County, Ted Lendis, Shawn McCrary,
Marci Henson, Letty Bonilla, and Sandra
Jeantete,

Defendants.

Case No. 2:19-cv-01775-RFB-DJA

ORDER

I. INTRODUCTION

Before the Court is Defendants' Motion for Summary Judgment. (ECF No. 64).

II. PROCEDURAL BACKGROUND

On September 23, 2019, Plaintiff Elaine Go filed a Complaint with the Eight Judicial District Court in Clark County, Nevada. ECF No. 1. Defendants removed the action to this Court on October 10, 2019. ECF No. 1. On October 21, 2019, Defendants filed a Motion to Dismiss. ECF No. 7. Plaintiff responded on December 17, 2019, ECF No. 22, and Defendants replied on December 24, 2019, ECF No. 24. On November 18, 2019, Plaintiff filed a Second Amended Complaint and demanded a jury trial. ECF No. 17.

On December 3, 2019, Defendant Clark County filed an Answer. ECF No. 18. On January 10, 2020, an Early Neutral Evaluation session was held before Magistrate Judge Cam Ferenbach; a settlement agreement was not reached. ECF No. 27. On January 24, 2020, a Scheduling Order was entered directing all discovery due by December 9, 2020, motions due by January 8, 2021, and proposed Joint Pretrial Order due by February 7, 2021. ECF No. 30.

1 On November 3, 2020, Plaintiff filed a Third Amended Complaint and demanded a jury
 2 trial. ECF No. 48. Defendants filed an Answer on November 18, 2020. ECF No. 55. On November
 3 25, 2020, this Court denied Defendants' Motion to Dismiss without prejudice and ordered Plaintiff
 4 to file a Fourth Amended Complaint. ECF No. 58. The Court also granted Defendants leave to file
 5 a partial motion for summary judgment prior to the close of discovery on the issues of preemption
 6 and discretionary-act immunity after having seen the Fourth Amended Complaint. Ibid.

7 On December 9, 2020, Plaintiff filed a Fourth Amended Complaint, alleging the
 8 following claims: (1) failure to accommodate under the Americans with Disabilities Act (ADA);
 9 (2) hostile work environment under the ADA; (3) disability discrimination in violation of NRS §
 10 613.330; (4) interference under the Family and Medical Leave Act (FMLA); (5) intentional
 11 infliction of emotional distress; (6) violations of 42 U.S.C. § 1983; (7) disability discrimination
 12 under the ADA; and (8) retaliation under the ADA. ECF No. 62. Defendants filed an Answer on
 13 December 23, 2020. ECF No. 63.

14 On January 6, 2021, Defendants Lendis, McCrary, Henson, Bonilla, and Jeantete filed the
 15 instant Motion for Summary Judgment with respect to Plaintiff's claim of intentional infliction
 16 of emotional distress. ECF No. 64. Plaintiff responded on February 17, 2021, ECF No. 70, and
 17 Defendants replied on March 8, 2021, ECF No. 73.

18 19 **III. FACTUAL BACKGROUND**

20 **a. Undisputed Facts**

21 The Court finds the following facts to be undisputed.

22 Between 2017 and January 2020, Plaintiff Elaine Go was employed by Defendant Clark
 23 County as an Air Quality Specialist. During her employment, Plaintiff was supervised by
 24 Defendant Ted Lendis and interacted with the other individual defendants herein named.

25 Between September 2017 and April 2019, Plaintiff submitted six requests for work
 26 accommodations from Defendants Clark County, Sandra Jeantete, and Letty Bonilla, on the basis
 27 of her alleged disabilities. Plaintiff alleged that she suffered from agoraphobia, anxiety, and panic
 28 disorders. Plaintiff's requested accommodations included: being seated away from her supervisor;

1 receiving a reduced number of “adverse assignments” and high-profile cases; participating in a
2 reduced number of meetings with her supervisor, or in the alternative, having a third-party observer
3 at the meetings; receiving all task instructions in writing; and being permitted to work from home
4 once or twice per week.

5 Defendants Jeantete and Bonilla, who work within the Clark County Office of Diversity,
6 determined that Go’s alleged conditions did not rise to the level of a disability. Between October
7 2017 and June 2019, Plaintiff’s requests for accommodations were denied. In December 2017,
8 Plaintiff informed Defendant Marci Henson, the Director of the Department of Air Quality, that
9 she could not return to work without receiving her requested accommodations. Defendant Henson
10 began to classify Go’s absences as unauthorized leave without pay. In January 2018, Plaintiff
11 submitted a request for leave without pay, which Henson denied.

12 Plaintiff subsequently experienced a series of negative evaluations at work. In September
13 2018, she was required to attend a “daily production meeting” with Defendant Lendis to discuss
14 her workload management. Also, that month, Defendant Henson met with Plaintiff to discuss her
15 alleged “insubordination” and lack of professionalism. Plaintiff was formally written up in October
16 2019 for insubordination. On January 21, 2020, Plaintiff was terminated.

17 **b. Disputed Facts**

18 The parties fundamentally dispute the validity of Plaintiff’s requested work
19 accommodations, as well as Defendants’ alleged treatment of Plaintiff. First, the parties dispute
20 whether Plaintiff’s alleged agoraphobia, anxiety, and panic disorders qualify as disabilities under
21 the ADA. Defendants Lendis, McCrary, and Henson deny that they were ever notified of Plaintiff’s
22 alleged conditions or requested work accommodations.

23 Plaintiff principally contends that all of the individual defendants – Lendis, McCrary,
24 Henson, Bonilla, and Jeantete – engaged in a campaign of harassment and bullying, intentionally
25 discriminated against Plaintiff on the basis of her disability status and colluded to deny her of her
26 rights under the FMLA, ADA, and Nevada anti-discrimination and tort law.

27 Plaintiff further alleges that Defendant Lendis intentionally treated her with malice. She
28 alleges that he left work in her queue while she was out on FMLA leave, left information about

1 Plaintiff's FMLA leave in a folder designated for public records to be disclosed to the public,
 2 recommended that Plaintiff's request for leave be denied because her work was "untimely,"
 3 required Plaintiff to schedule FMLA leave for treatment in advance, resulting in delayed medical
 4 treatment, and repeatedly berated her about her work performance.

5 Plaintiff alleges that Defendants Jeantete and Bonilla derided Plaintiff for claiming that her
 6 conditions constituted disabilities. She alleges Defendant Jeantete did not evaluate Plaintiff's
 7 medical records or consult with a physician before denying Plaintiff's requested accommodations.
 8 Plaintiff further alleges that defendants Lendis, Henson, and McCrary "adopted" this derisive
 9 attitude, and that all defendants collectively "sneered at, mocked, bullied, and ganged up on"
 10 Plaintiff – knowing that she had various mental health challenges – in order to exacerbate her
 11 alleged conditions.

12 Plaintiff alleges that the defendants' collective treatment of her "was so harsh that it
 13 triggered a severe panic attack that caused her to seek inpatient care at a mental health facility."

14 Defendants deny all of the above allegations.

15 16 **IV. LEGAL STANDARD**

17 Summary judgment is appropriate when the pleadings, depositions, answers to
 18 interrogatories, and admissions on file, together with the affidavits, if any, show "that there is no
 19 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."
 20 Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

21 When considering the propriety of summary judgment, the court views all facts and draws
 22 all inferences in the light most favorable to the nonmoving party. Gonzalez v. City of Anaheim,
 23 747 F.3d 789, 793 (9th Cir. 2014).

24 If the movant has carried its burden, the non-moving party "must do more than simply
 25 show that there is some metaphysical doubt as to the material facts Where the record taken
 26 as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine
 27 issue for trial." Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original) (internal quotation
 28 marks omitted).

1 **V. DISCUSSION**

2 Under Nevada law, a plaintiff alleging a claim of intentional infliction of emotional distress
 3 (IIED) must establish that defendants (1) engaged in extreme and outrageous conduct with either
 4 the intention of, or reckless disregard for, causing emotional distress; (2) that the plaintiff suffered
 5 severe or extreme emotional distress; and (3) that actual or proximate causation exists between
 6 defendant's conduct and plaintiff's injury. Star v. Rabello, 625 P.2d 90, 91-92 (Nev. 1981).
 7 Extreme and outrageous conduct is that which is outside all possible bounds of decency and is
 8 regarded as utterly intolerable in a civilized community. Maduik v. Agency Rent-A-Car, 953 P.2d
 9 24, 26 (Nev. 1998).

10 Defendants contend that Plaintiff has failed to provide evidence that the individual
 11 defendants' behavior towards her rose to the level of "extreme and outrageous conduct" required
 12 for an IIED claim. Defendants argue that the actions they took against Plaintiff largely constitute
 13 personnel management activities, which are insufficient to support a claim of IIED, even if
 14 improper motivation is alleged. Further, while Defendants deny that they ever sneered at or
 15 mocked Plaintiff, they contend that this type of conduct is not "extreme or outrageous." Plaintiff
 16 responds that Defendants used their positions of power to bully and inflict severe emotional
 17 distress upon a person they knew to be suffering from anxiety and panic disorders. Plaintiff alleges
 18 that by denying her disability, forcing her to work without accommodations, berating her, and
 19 issuing writeups against her, Defendants intentionally sought to inflame Plaintiff's conditions and
 20 inflict emotional harm upon her. In support of this claim, Plaintiff offers affidavit by her husband,
 21 William Livosi, in which he attests to Defendants' alleged torment and the pain that Plaintiff
 22 allegedly endured for three years. Plaintiff also argues that expert witnesses can provide testimony
 23 about her resulting hospitalization and PTSD.

24 The Court agrees with Defendants that, on the basis of the undisputed facts, Plaintiff cannot
 25 satisfy the elements required to make out a claim of IIED. An IIED claim cannot be based upon
 26 "mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." Candalore
 27 v. Clark Cty. Sanitation Dist., 975 F.2d 588, 591 (9th Cir. 1992) (applying Nevada law and quoting
 28 Restatement (Second) of Torts, § 46 cmt. D (1965)). Further, everyday personnel management

1 activities – such as hiring and firing, promotion and demotion, and performance evaluations – do
2 not support a claim of IIED, even when improper motivation is alleged. Kraja v. Bellagio, LLC,
3 202 F. Supp. 3d 1163, 1174 (D. Nev. 2016).

4 Plaintiff alleges that she was denied various accommodations at work and that Defendants
5 denied her these accommodations, subjected her to increasingly harsh sanctions and discipline,
6 and “mocked, sneered, ganged up on, and bullied” her for her disability. While bullying an
7 individual for the purposes of inflaming their mental health conditions might rise to the level of
8 “extreme and outrageous conduct” for the purposes of establishing an IIED claim, Plaintiff has not
9 offered any proof that Defendants in fact acted with the malicious intent to harm her. The only
10 evidence that Plaintiff offers is Mr. Livosi’s affidavit, which is largely based on conclusory
11 allegations that the defendants “joke[d] about [Plaintiff’s] condition” and “knew that Elaine was
12 suffering tremendously and only sought to punish her.” These statements are purely speculative,
13 and do not provide a sufficient evidentiary basis to find that Defendants acted with the subjective
14 intent of exacerbating Plaintiff’s alleged illness.

15 To the extent that Plaintiff argues that the alleged bullying and workplace discipline, in and
16 of itself, can support a claim for IIED, this Court rejects that argument. It is well established that
17 under Nevada law, an IIED claim cannot be based upon mere insults or indignities, nor can it be
18 based on an objection to personnel management actions taken in the workplace. Plaintiff’s alleged
19 mistreatment is predicated upon insults and workplace sanctions and does not fall “outside all
20 possible bounds of decency” so as to be “regarded as utterly intolerable in a civilized community.”
21 Maduik, 953 P.2d at 26. Accordingly, Plaintiff’s IIED claim cannot survive as a matter of law.

22 Defendants further contend that Plaintiff’s IIED claim is preempted by the Nevada
23 Industrial Insurance Act and NRS § 613.330, and that Defendants are immune from suit under
24 NRS § 41.032. Because the Court determines that the undisputed facts and all inferences drawn
25 therefrom, when viewed in the light most favorable to Plaintiff, do not support a claim of IIED, it
26 need not reach the merits of Defendant’s claims of preemption and immunity.

1 **VI. CONCLUSION**

2 **IT IS THEREFORE ORDERED** that Defendants' Motion for Summary Judgment (ECF
3 No. 64) is **GRANTED**. The Plaintiff's IIED claim is dismissed.

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5 DATED: September 30, 2021.

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE